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Philips International Holding Corp., WEC 99A-2 LLC,
Ashkenazy Management Corp., and The MacNaughton Group

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Circuit City Stores, Inc. et. al.,

Debtors.

Chapter 11

Case No. 08-35653-KRH

Jointly Administered

**LIMITED OBJECTION OF DEVELOPERS DIVERSIFIED REALTY CORPORATION,
GENERAL GROWTH PROPERTIES, INC., WEINGARTEN REALTY INVESTORS,
BASSER-KAUFMAN, INC., REGENCY CENTERS, L.P., THE WOODMONT
COMPANY, JONES LANG LASALLE AMERICAS, INC., PHILIPS INTERNATIONAL
HOLDING CORP., WEC 99A-2 LLC, ASHKENAZY MANAGEMENT CORP., AND
THE MACNAUGHTON GROUP TO THE MOTION OF DEBTORS FOR ORDER
UNDER BANKRUPTCY CODE SECTION 365(D)(4) EXTENDING TIME WITHIN
WHICH DEBTORS MAY ASSUME OR REJECT UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY**

Developers Diversified Realty Corporation, General Growth Properties, Inc., Weingarten
Realty Investors, Basser-Kaufman, Inc., Regency Centers, L.P., The Woodmont Company, Jones
Lang LaSalle Americas, Inc., Philips International Holding Corp., WEC 99A-2 LLC, Ashkenazy
Management Corp. and the MacNaughton Group (collectively, the “Landlords”), by and through
their attorneys, Kelley Drye & Warren LLP, hereby submit this limited objection (the

“Objection”) to the Debtors’ motion (the “Motion”), dated November 20, 2008,¹ for an order pursuant to Bankruptcy Code section 365(d)(4) extending the time within which the Debtors may assume or reject unexpired leases of nonresidential real property. In support of this Objection, the Landlords respectfully state as follows:

PRELIMINARY STATEMENT

1. The Debtors’ Motion requests a 90-day extension “within which the Debtors must assume or reject the Leases.”² The proposed order, however, improperly seeks to extend the deadline by which the Debtors “may move to assume or reject” the Leases.³ The Landlords do not object to an extension of the Debtors’ 365(d)(4) deadline by which the Debtors must actually assume or reject Leases, however, the Landlords do object to any attempt to characterize the 365(d)(4) deadline as only the deadline by which the Debtors must move to assume or reject their Leases. the statutory deadline. The plain language of section 365(d)(4) is clear that the Debtors’ assumption or rejection of their Leases must be completed by the section 365(d)(4) deadline, rather than the Debtors merely having to file a motion to assume or reject their Leases by the 365(d)(4) deadline.

BACKGROUND

2. On November 10, 2008 (the “Petition Date”) the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court.

3. The Debtors remain in possession of their properties and continue to manage their business as debtors and debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

¹ Docket No. 290.

² Motion ¶ 9, at p. 5.

³ Proposed Order ¶ 2 at p. 2.

4. The Landlords are the owners, or managing agents for the landlords, of numerous shopping centers located throughout the United States. The Debtors lease retail space from the Landlords pursuant to written leases (the “Leases”) at locations subject to the Motion identified in the chart annexed hereto as Exhibit A (the “Leased Premises”).

5. The Leased Premises are located in “shopping centers” as that term is defined in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081 (3d Cir. 1990).

6. The Debtors’ 365(d)(4) period is currently set to expire on March 10, 2009. By the Motion, the Debtors seek a 90 day extension of the 365(d)(4) period within which the Debtors must assume or reject the Leases.⁴ The proposed order attached to the Motion seeks to extend the “period within which the Debtors **may move** to assume or reject any or all of the Leases . . . through and including the earlier of June 8, 2009 and the date of the entry of an order confirming a plan of reorganization; provided, however, that the assumption or rejection of Leases pursuant to a plan of reorganization confirmed prior to June 8, 2009 may become effective on the effective date of the plan of reorganization (which assumption or rejection of Leases shall not be later than June 8, 2009 or such later deadline as may be agreed to by each applicable landlord pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code).”⁵ (emphasis added).

ARGUMENT

I. The Debtors Must Actually Assume Or Reject The Leases By The Earlier Of June 8, 2009 Or Confirmation Of A Plan

7. The Landlords do not object to an extension of the Debtors deadline to assume or reject the Leases to the earlier of June 8, 2009 or confirmation of a plan. However, the proposed

⁴ Motion ¶ 9, at p. 5.

⁵ Proposed Order ¶ 2 at pp. 2-3.

order improperly seeks to extend the Debtors' time to "move" to assume or reject the Leases to the earlier of June 8, 2009, or confirmation of a plan. Such an extension is contrary to the clear language of section 365(d)(4) of the Bankruptcy Code and should be denied.

8. Section 365(d)(4) of the Bankruptcy Code states:

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of –
(i) the date that is 120 days after the date of the order for relief; or
(ii) the date of the entry of an order confirming a plan.
(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.
(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4).

9. The plain language of section 365(d)(4) is clear that the Debtors' assumption or rejection of their Leases must be completed by the section 365(d)(4) deadline, rather than the Debtors merely having to file a motion to assume or reject their Leases by the 365(d)(4) deadline.

WHEREFORE, the Landlords respectfully request that the Court enter an Order

(i) compelling the Debtors to assume or reject the Leases by the earlier of June 8, 2009 and confirmation of a plan; and (ii) granting for such other relief as the Court deems just, proper and equitable.

Dated: New York, New York
December 3, 2008

KELLEY DRYE & WARREN LLP

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Holding Corp., WEC 99A-2 LLC, Ashkenazy
Management Corp., and The MacNaughton Group

EXHIBIT A

Developers Diversified Realty			
Store#	Mall Name	City	State
	Brook Highland	Birmingham	Alabama
	Circuit City - Dothan	Dothan	Alabama
	Buena Park Place (Power Center)	Buena Park	California
	Circuit City - Culver City	Culver City	California
	Circuit City - Highland Ranch	Highland Ranch	Colorado
	Carillon Place	Naples	Florida
	Cortez Plaza	Bradenton	Florida
	Homestead Pavilion	Homestead	Florida
	The Shops at Midtown Miami	Miami	Florida
	Walks at Highwood Preserve I	Tampa	Florida
	Skyview Plaza	Orlando	Florida
	Circuit City - Rome	Rome	Georgia
	Woodfield Village Green	Schaumburg	Illinois
	Merriam Village	Merriam Village	Kansas
	Grandville Marketplace	Grandville	Michigan
	Green Ridge Square II	Grand Rapids	Michigan
	1000 Turtle Creek Drive	Hattiesburg	Mississippi
	Crossroads Center	Gulfport	Mississippi
	Hamilton Commons	Mays Landing	New Jersey
	Route 22 Retail Shopping Center	Union	New Jersey
	Southern Tier	Horseheads	New York
	Union Consumer Square II	Cheektowaga	New York
	Beaver Creek Crossings South	Apex	North Carolina
	Circuit City - Cary	Cary	North Carolina
	River Hills	Asheville	North Carolina
	Sycamore Commons	Matthews	North Carolina
	Wendover II	Greensboro	North Carolina
	Peach Street Square II	Erie	Pennsylvania
	Township Marketplace	Monaca	Pennsylvania
	Plaza del Norte	Hatillo	Puerto Rico
	Columbiana Station	Columbia	South Carolina
	The Point	Greenville	South Carolina
	Wando Crossing	Mt. Pleasant	South Carolina
	Town & Country I	Knoxville	Tennessee
	Family Center at Riverdale	Riverdale	Utah
	Creeks at Virginia Center	Glen Allen	Virginia
	Fairfax Town Center	Fairfax	Virginia
	Loisdale Center	Springfield	Virginia
	Circuit City - Olympia	Olympia	Washington
Jones Lang LaSalle Americas			
Store #	Mall Name	City	State
	Mall at Whitney Field	Leominster	Massachusetts

	Hanover Mall	Hanover	Massachusetts
<u>General Growth Properties</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Alexandria Mall	Alexandria	Louisiana
	Boise Town Plaza	Boise	Idaho
	Boulevard Mall	Las Vegas	Nevada
	Burbank Town Center	Burbank	California
	Deerbrook Mall	Humble	Texas
	Eastridge Mall	San Jose	California
	Mall of Louisiana	Baton Rouge	Louisiana
	Montclair Plaza North	Montclair	California
	Northridge Fashion Center	Northridge	California
	The Shoppes at River Crossing	Macon	Georgia
	Steeplegate Mall	Concord	New Hampshire
	Parks at Arlington	Arlington	Texas
	Willowbrook	Houston	Texas
	Woodlands	The Woodlands	Texas
<u>Philips International</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Palm Springs Mile	Hialeah	Florida
<u>Basser Kaufman</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
3724	Fellsway Plaza	Saugus	Massachusetts
3146		Springfield	Massachusetts
<u>Regency Centers</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
	Brea Marketplace	Brea	California
	Powell Street Plaza	Emeryville	California
<u>Weingarten Realty Investors</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
545	Overton Park Plaza	Ft. Worth	Texas
838	Colonial Plaza	Orlando	Florida
3304	Oracle Wetmore	Tucson	Arizona
3307	Pavilion at San Mateo	Albuquerque	New Mexico
3418	Marketplace at Seminole Towne Center	Sanford	Florida
3504	Moore Plaza	Corpus Christi	Texas
6357	Pembroke Commons	Pembroke Pines	Florida
	River Point at Sheridan	Sheridan	Colorado
<u>WEC 99A-2 LLC</u>			
<u>Store #</u>	<u>Mall Name</u>	<u>City</u>	<u>State</u>
		Fayetteville	Arkansas

<u>Ashkenazy Management Corp.</u>			
Store #	Mall Name	City	State
	AAC Cross County Mall	Yonkers	New York
<u>The MacNaughton Group</u>			
Store #	Mall Name	City	State
	Kona Commons	Kailua-Kona	Hawaii

CERTIFICATE OF SERVICE

I, hereby certify that on the 3rd day of December, 2008, a true and accurate copy of the foregoing *Limited Objection of Developers Diversified Realty Corporation, General Growth Properties, Inc. Weingarten Realty Investors, Basser-Kaufman, Inc., Regency Centers, L.P., The Woodmont Company, Jones Lang LaSalle Americas, Inc., Philips International Holding Corp., WEC 99A-2 LLC, Ashkenazy Management Corp., And The MacNaughton Group To The Motion Of Debtors For Order Under Bankruptcy Code Section 365(d)(4) Extending Time Within Which Debtors May Assume Or Reject Unexpired Leases Of Nonresidential Real Property* was electronically filed with the Clerk of the Court using the CM/ECF system, which shall cause notice of electronic filing to be served on all registered users of the ECF system that have filed notices of appearance in this case.

/s/ Howard S. Steel
Howard S. Steel